

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN BILL GLASER**, on February 12, 2003 at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Bill Glaser, Chairman (R)
Sen. Bob Story Jr., Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Edward Butcher (R)
Sen. Mike Cooney (D)
Sen. Royal Johnson (R)
Sen. Jeff Mangan (D)
Sen. Don Ryan (D)
Sen. Tom Zook (R)

Members Excused: Sen. Jim Elliott (D)

Members Absent: None.

Staff Present: Tari Elam, Committee Secretary
Connie Erickson, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 205, 2/4/2003; SB 313, 2/4/2003;
SB 291, 2/4/2003; SB 280, 2/4/2003
Executive Action: SB 259; SB 276

HEARING ON SB 205

Sponsor: SENATOR JOHN COBB

Proponents: Brittany Hallett, self
Steph & Lucy Hallett, themselves and their daughter

Opponents: Bob Vogel, Director of Government Relations,
Montana School Boards Association (MTSBA)
Jock Anderson, Montana High Schools
Association (MHSA)

Informational Witnesses: NONE

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 0.5 - 3.3}

SENATOR JOHN COBB, SD 25, Cascade County, introduced SB 205, a bill which prohibits the board of trustees for a public high school from joining an organization which does not allow consideration given under the Individuals with Disabilities Education Act (IDEA) to be extended to all students 19 years of age and enrolled full-time. SEN. COBB explained the bill attempts to address a bright-line rule established by a non-profit organization which states that a student who turns nineteen before August 31st, may not participate in competitive athletic programs during the subsequent academic year. He noted, under IDEA a student with a documented disability may apply for an exemption from this rule; however, the same opportunity is not extended to individuals who may, through no fault of their own, have been unable to graduate before turning nineteen. SEN. COBB briefly introduced Brittany Hallett and her parents, and offered that her case is indicative of a reason for the rule to be changed.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 3.4 - 5.9}

Brittany Hallett, self, testified she was removed from the custody of her birth parents at eight and half years of age. Placed in the care of her grandmother, she began kindergarten halfway through that school year. She lived with her grandmother and a cousin in Minnesota until the age of eleven at which time she was placed with Steph & Lucy Hallett, her adoptive parents,

and began fourth grade. She explained despite having begun late, when she graduates from high school she will have completed thirteen years of school in eleven years. She has been an honor student since beginning high school.

In the fifth grade, Brittany joined the Falls Aquatic Swim Team (FAST); she has been a member since that time. Recently, **Ms. Hallett** discovered she will not be able to compete with her team during her senior year due to a rule established by the **Montana High Schools Association**. Although she will turn nineteen on August 5th, Brittany believes she should be allowed to apply for a waiver of the rule. She could not have planned the events which prevented her beginning school on time, nor could she have foreseen a rule such as this one being imposed. She stated she would simply like to swim with her team and achieve her goals.

Steph & Lucy Hallett, on behalf of themselves and their daughter, submitted written testimony **EXHIBIT** (eds31a01).

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 6 - 14.2}

Bob Vogel, MTSBA, stated his opposition comes with great difficulty after hearing the testimony of **Ms. Hallett**. However, because he believes passage of this bill sets a dangerous precedent, and is an erosion of local control, his organization must stand in opposition.

Jock Anderson, MHSA, stated his organization is comprised of 181 Montana schools; all public high schools belong to **MHSA**. He stated the organization began in Montana in the 1920s and has had an age rule since the mid-1950s. Contrary to language contained in the bill, **Mr. Anderson** explained his organization is not truly a separate entity from the public schools but represents the collective will of those members. Each member school sends a representative to various meetings where rules and guidelines are adopted. He stated the age rule is recommended by the National Federation of Athletic Associations, and is similar to age rules in thirty-four other states. He stated he is familiar with **Ms. Hallett's** case, and noted there is a rule that allows for a person such as her to apply for a waiver. He noted there are a couple of ways a person can achieve a sense of relief from the rule: a) they may enter a sport in the eighth grade so as to allow for four years of competition; or, b) they may apply for a waiver. There is also a general provision which allows the Board to wave the rule for exceptional or unusual circumstances.

Mr. Anderson also indicated, should this bill become effective immediately, he believes there should be a fiscal note of about \$150,000. He explained **MHSA** holds their annual meeting in January. Should the legislature pass this bill in the hopes of forcing **MHSA** to change its policy to provide relief to this particular individual, it would be necessary to hold a special meeting. This would require bringing 181 schools together with resulting costs of \$150,000.

Mr. Anderson also provided the Committee with a summary of his oral testimony, and a copy of page twenty (20) of **MHSA's** handbook **EXHIBIT**(eds31a02).

Questions from Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Counter: 14.5 - 31}

{Tape: 1; Side: B; Approx. Time Counter: 2 - 18}

SENATOR TOM ZOOK, referring to **Mr. Anderson's** testimony regarding the age rule being applied equally to everyone, and his statement regarding the Board having authority to waive the rule, asked how those two contradictory statements correlate. **Mr. Anderson** explained, on the first aspect, the rule is contained within **MHSA's** handbook and is two sentences in length. The written exception to the rule arises from a decision rendered by Judge James F. Battin of the U.S. District Court for the District of Montana. In that case, *T.H. et al v. Montana High School Association*, Judge Battin determined, under the rules of **IDEA**, a student with a disability whose academic success is anchored to participation in competitive sports has a constitutionally protected interest in that activity. Therefore, where a student falls under **IDEA**, **MHSA** must do an individualized inquiry into the student's specific circumstances before applying the bright-line age rule. On the second aspect, since the Board of Control is elected to implement the rules they always have the inherent right to waive those rules. **SEN. ZOOK**, referring again to **Mr. Anderson's** testimony, inquired whether "exceptional or unusual" go together or are two separate situations. **Mr. Anderson** asked permission to refer to the handbook. He noted the rule under Section Five, the Executive Board, says "the Executive Board shall hear all appeals of decisions by the executive director and shall have the authority to grant relief in cases of emergency or where extenuating circumstances are involved." **SEN. ZOOK**, stating he realized the Executive Board must make the decision, asked **Mr. Anderson** whether he thought there were extenuating circumstances in this instance. **Mr. Anderson** replied in the affirmative, but indicated that answer does not imply the Board

will be willing to grant relief. He also stated waivers are granted rarely in age rule cases.

SENATOR JEFF MANGAN, as a follow-up to **SEN. ZOOK's** question, inquired whether a waiver would be preferable to passage of this legislation. **Mr. Anderson** replied in the affirmative, noting anything would be preferable to legislative action. He reiterated his familiarity with **Ms. Hallett's** case. Referring to item number six of **Mr. Anderson's** summary of opposition [see, EXHIBIT 2], in which he states the need for this type of decision "offends basic principles of competition," **SEN. MANGAN** asked him to provide further explanation because he was unable to determine how the bill requires the organization to differentiate between superior and lesser athletes. **Mr. Anderson** explained Judge Battin's decision requires **MHSA** to make an individualized inquiry into the student's specific circumstances in order to grant relief in the form of a waiver to the age rule. The inquiry includes: a) whether the person displaces an otherwise qualified player; b) whether the person will have an inordinate positive impact on the competition; and, c) whether the person presents a safety risk. He stated the decision requires **MHSA** to make a determination that either: 1) the particular student is too good an athlete to play; or, 2) they are an indifferent athlete and will be allowed to play. Essentially, either saying you are too good to play or you are sufficiently untalented to rule out. **SEN. MANGAN**, stating the proposition of finding a nineteen year old either a good or lesser athlete, as described by **Mr. Anderson**, he finds to be personally offensive. He asked **Mr. Anderson** how a measure such as that can be generalized. **Mr. Anderson**, indicated he was unclear what **SEN. MANGAN** was asking. He explained under the Battin decision his organization is required to evaluate the abilities of the particular athlete, as well as, the abilities of those athletes against whom the person might compete. If it is determined the athlete will affect competition they are not allowed to play. If it is determined the person is a lesser athlete who will not affect competition, they will be allowed to play. In **MHSA's** opinion, this is offensive to competition.

SENATOR DON RYAN, in reference to **Mr. Anderson's** statement regarding a necessary fiscal note, inquired to whom would the financial obligation fall. **Mr. Anderson** replied it would fall to the member schools as a direct obligation. **SEN. RYAN**, referring to **Mr. Anderson's** statement regarding the Executive Director's having authority to grant a waiver, asked whether \$150,000 could be considered extenuating. **Mr. Anderson** replied his former statement was incorrect, only the Board of Control has authority to grant that type of waiver. **SEN. RYAN** asked how many people

are on the Board. **Mr. Anderson** replied seven. **SEN. RYAN** then asked whether **Mr. Anderson** believed it would cost \$150,000 to bring seven people together. **Mr. Anderson** replied in the negative.

SEN. ZOOK, referring to **Mr. Anderson's** response to **SEN. MANGAN**, stated he is unable to find where the bill requires **MHSA** to differentiate between good and lesser athletes. **Mr. Anderson** responded the age rule says if a student turns nineteen before midnight August 31st they are excluded from competition. The exception to the general rule arises from Battin's decision regarding students who fall under **IDEA**. With an application for waiver which falls under the Battin decision an individualized inquiry must be made. He continued, stating **SB 205** extends the Battin "individualized inquiry" decision to any student applying for a waiver. **SEN. ZOOK** sought further clarification from **Mr. Anderson**, asking if it is his position that a nineteen year old who may be a "special person" is a lesser athlete. **Mr. Anderson** replied at present the determination now rests on whether a student is a good enough athlete to affect competition and that amounts to a determination of the quality of athlete they are.

SEN. MANGAN, seeking further clarification of **MHSA's** rule and number two of the exception's guidelines--which indicates the student has the burden of proving they do not skew the overall competitiveness of the activity--asked why **MHSA** is attempting to determine the ability of the athlete. **Mr. Anderson** explained a good athlete will contribute to a team and will change the competitive balance between the teams. Under the Battin decision, **MHSA** must make the determination whether this particular student, in this particular circumstance is a better than average athlete or an indifferent athlete. **SEN. MANGAN** inquired whether an athlete who turns nineteen on September 1st is that much further behind an athlete who turns nineteen on August 1st. **Mr. Anderson** replied the athlete who turns nineteen on August 1st would be ineligible under the rule.

SENATOR JERRY BLACK inquired how many students actually fall under this rule each year. **Mr. Anderson** replied it is his understanding approximately two per year come before the Board with an application for waiver. **SEN. BLACK**, speaking to those who apply, how many are granted waivers. **Mr. Anderson** responded, as conveyed to him, approximately one-half are allowed to play and one-half are not.

SEN. RYAN explained his understanding of a "red shirt" year, and asked **Mr. Anderson** to expand on that particular practice. **Mr. Anderson** explained some parents will either hold their child back

a year in the eighth grade, or find another way to have the child be behind a year so as to allow that child as much opportunity as possible for developing their athletic abilities. In some states they address this possibility through a twelve semester rule. The count begins the first semester of seventh grade. **SEN. RYAN**, stating in this instance we are not referring to a conscious choice made by a student's parents in the same sense as the ones previously alluded to, but a decision over which this student had no control, indicated he believes this is one of the circumstances that should be given consideration in a situation where we already allow distortion with age. **Mr. Anderson** responded by explaining the distinction between the "age rule" and the "age semester rule." Had this particular student been allowed to play since eighth grade, then we would not be addressing the same question. However, since she was not identified in the eighth grade we are confronted with the age rule.

SENATOR EDWARD BUTCHER explained his understanding of the bill is that it will place everyone under the protection of **IDEA**. He inquired whether that conclusion is correct. **Mr. Anderson** replied it will be necessary to meet the case-by-case requirements for every such student. **SEN. BUTCHER** continued his explanation stating, if you have an exceptional athlete they will not be allowed to play regardless, however, and beyond the particular individual here today, if you have an athlete who has never been able to participate, but wants to play, the Board will be required to follow the holding of the Battin decision. **Mr. Anderson** replied he does not know where this type of legislation will lead, however, they believe the numbers of individuals will be more than can be handled. He also believes a situation may arise where there can be no fair determination. He provided an example of a twenty year old senior, who weighs 150 pounds, never having been able to play football or basketball, decides to try wrestling. At 150 pounds he will be placed in a weight bracket with other 150 pound athletes, but, he emphasized, there is a big difference between a 150 man and a 150 fifth grader. He asked: how does one quantify that difference?

SEN. BUTCHER stated he believes there to be approximately 200 students who are, or will be, nineteen year old seniors. Therefore, conceivably you have that number who could decide they want to be athletes. **Mr. Anderson** replied he can almost guarantee that figure is very low.

SENATOR ROYAL JOHNSON asked if **Mr. Anderson** had indicated Executive Directors may render a decision on the exception. **Mr. Anderson** replied in the affirmative. **SEN. JOHNSON**, referring to page twenty of the handbook, indicated the rules seem to state

otherwise. **Mr. Anderson** replied all decisions are first referred to the Executive Director who has the power to allow someone to play under the exemption. **SEN. JOHNSON** continued, explaining the Executive Director must investigate the request and refer to the Board for hearing at the next scheduled meeting. **Mr. Anderson** replied in all other instances the Executive Director does have the power, however, he did not realize with this exception he does not.

CHAIRMAN BILL GLASER requested **Mr. Anderson** delineate the process by which **MHSA** establishes rules. **Mr. Anderson** explained all rules are enacted by a vote of the membership. Bylaws--the age rule is a bylaw--is enacted by a two-thirds vote; other rules and regulations are enacted by a majority vote. **MHSA** holds an annual meeting each January at which time all rules are proposed to the membership. The proposed rules are provided in advance to various Boards of Trustees, who indicate to their respective representative how they would vote on a matter. **CHAIRMAN GLASER** inquired if and how meetings are noticed to the public. **Mr. Anderson** replied in the affirmative as to notice, indicating a thirty day advance notice is provided to the Board of Trustees. **CHAIRMAN GLASER**, relying upon the Administrative Procedures Act, asked how the general public is provided with notice. He explained, as a pseudo-public entity--working for public schools while operating on school property--**MHSA** is subject to Montana's Open Meeting laws and must therefore provide notice to the general public. **Mr. Anderson** replied **MHSA** has never operated as though governed by the Administrative Procedures Act. If it is correct they are subject to those laws, they clearly need to make changes.

SEN. MANGAN inquired whether **Mr. & Mrs. Hallett** had applied for a waiver on their daughter's behalf. **Mrs. Hallett** replied in the negative, stating she and her husband have been told they may not apply until six months before her daughter's senior year. They have also been told there is no guarantee the waiver will be granted, so they are attempting to address the issue before that time. **Mr. Steph Hallett** stated they have been told by everybody in the school system and their own attorney that there is a long history of waivers not being granted unless a student falls under the disabilities act. **SEN. MANGAN** asked whether they had any confidence a waiver would be granted if they applied. **Mr. Hallett** replied they did not.

CHAIRMAN GLASER requested **SEN. COBB** address the issue of the rule making authority contained within **MHSA's** handbook in his closing.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 18.1 - 20.8}

SEN. COBB indicated he did not know the answer to the question posed by **CHAIRMAN GLASER**. However, he finds it troublesome that an individual cannot get a waiver unless they fall under **IDEA**. A person cannot get a waiver because the rules say the Executive Director may not grant a waiver no matter what the circumstances are if the student is not a part of special education. He stated **Ms. Hallett** did not intend to create a problem with this request, she understands rules are important and sometimes life is not fair. In this instance, tax dollars are paying for education, including athletics. Those dollars are also supporting a non-profit organization which sets the rules. All **Ms. Hallett** is asking is that she be allowed to apply for the waiver, and that **MHSA** give her the same consideration they would any student with a disability. The Board might determine she is too good an athlete, but at least she will have had the opportunity to demonstrate extenuating circumstances. **SEN. COBB** also suggested members of the Committee might write letters to the Board providing them with advice on this issue.

SEN. MANGAN requested he be provided with an address for the Board.

HEARING ON SB 313

Sponsor: **SENATOR SAM KITZENBERG**

Proponents: **George Knudsen, Vice-Chairman, Malta School Board**
Bob Vogel, MTSBA, in absentia
Bill Parker, Superintendent, Malta School District & Montana Association of School Superintendents (MASS)
Erik Burke, MEA-MFT

Opponents: **NONE**

Informational Witnesses: **NONE**

Opening Statement by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 21 - 22.4}

SENATOR SAM KITZENBERG, SD 48, Valley, Phillips, and Daniels Counties, brought forward a bill which authorizes a district to

transfer its' general fund end-of-the-year fund balance into its' miscellaneous programs fund. **SEN. KITZENBERG** stated, like members of the Committee, he conducted public meetings before coming to the legislature this January. During a meeting in Phillips County, **Mr. Bill Parker** and **Mr. George Knudsen** provided him with an idea on how districts could improve fiscal management. Their idea resulted in **SB 313**.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 22.5 - 31.2}

{Tape: 2; Side: A; Approx. Time Counter: 0.2 - 8.7}

George Knudsen, Vice-Chairman, Malta School Board, testified he is in support of this bill because it retains local control. He explained a district will often have one area where costs are much higher or lower than the anticipated budget; for example, one year heating costs might be much lower, but the next year much higher. If districts were allowed to retain more of the money they save one year in a particular area, they would be better able to deal with unanticipated costs in other years. He believes local taxpayers are more likely to approach him than they are a senator; and, accordingly, have a much stronger interest in how he is spending money.

Mr. Knudsen also conveyed the support of **Bob Vogel** of the **Montana School Boards Association**.

Bill Parker, Superintendent, Malta Schools, and MASS, expressed his organizations' support of **SB 313** and appreciation to **SEN. KITZENBERG** for bringing the bill forward. He stated they are pleased to support this bill because they feel as though they have been a part of its creation. **Mr. Parker** thinks school boards should be able to plan for contingencies by having more money in reserve. He stated the idea presented in this bill has been approved by various school boards, Montana Rural Education Association, MEA-MFT, and OPI. Although there is a fiscal note indicating a cost to the state of four to five million dollars, he believes because these are tax payer dollars already allocated to schools the money has already been spent. He understands there is reluctance on the part of the state to allow another reserve account, but he continues to feel local control of dollars promotes fiscal responsibility. And, schools need the money already provided to stay within their control.

Erik Burke, MEA-MFT, stated his organization is in support of the concept of this bill. He noted similar bills are presently in sub-committee at this time, and he would like all to be given due consideration.

Questions from Committee Members and Responses:***{Tape: 2; Side: A; Approx. Time Counter: 8.8 - 12.6}***

SEN. RYAN, referring to discussion which occurred in sub-committee, asked **SENATOR BOB STORY** whether the fiscal note's \$82,000,000 figure (total ending fund balances for all school districts) excludes those districts that have a lot of federal funding. **SEN. STORY** replied he was not certain because **Madalyn Quinlan, OPI**, stated the figure was \$6,000,000 this morning during the sub-committee meeting in reference to **SENATOR BILL GLASER's** bill. So it is somewhere between \$4,500,000 and \$6,000,000 depending on how you do the calculations. **CHAIRMAN GLASER** noted **Jim Standaert, Fiscal Affairs**, agrees there is approximately \$13,000,000 presently reappropriated, with the cost of this bill being between 4.5 - 6 million dollars.

SEN. ZOOK, referring to **Mr. Parker's** testimony on cash flow problems and changes made to the way money is sent to school districts in a prior session, asked **Mr. Parker** to clarify what those changes were. **Mr. Parker**, noted while not an expert, the changes ensured schools receive funding in a more timely manner.

SEN. STORY, noting the Committee heard a similar bill last week presented by **SEN. GLASER** in which the district could accumulate reserves for two years, asked **Mr. Parker** how that type of plan would work for his district. **Mr. Parker** responded, fine. As a final thought, he wanted the Committee to keep in mind in some districts in order to keep taxes down they would reappropriate, however, in districts such as his own it is not likely there would be any funds to do so.

Closing by Sponsor:***{Tape: 2; Side: A; Approx. Time Counter: 12.7 - 12.9}***

SEN. KITZENBERG stated he believes this is good management practice. However we accomplish the goal, we need to accomplish the goal. He expressed his appreciation to the Committee.

HEARING ON SB 291**Sponsor:** **SENATOR EDWARD BUTCHER****Proponents:** **David Morris, self**
Will Hammerquist, Associated Students,

Montana State University

Opponents: **NONE**

Informational Witnesses: **Joyce Scott, Deputy Commissioner,
Academic and Student Affairs,
Commissioner of Higher Education**

Opening Statement by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 13.2 - 21.2}

SENATOR EDWARD BUTCHER, SD 47, Cascade County, brought forward a bill which requires all campuses of the Montana University system to accept all college-level courses from regionally accredited institutions of higher education. **SEN. BUTCHER** stated the need for this legislation arises because university campuses are denying transfer of course credits from various institutions both in-state and out-of-state. Although numerous attempts have been made toward the adoption of a uniform course catalog, these efforts have thus far proved futile. **SEN. BUTCHER** believes much of the opposition arises from faculty members who disagree about what should or should not be covered in a specific course. He thinks this is absurd, particularly when discussing fundamental courses in English, history, and so forth. **SEN. BUTCHER** also believes professors who do not accept transfer credits on the grounds they believe their contemporaries are incompetent should take action on those beliefs because the state has no need for instructors who fail the grade. Although he would like the legislation to extend to all accredited colleges, he has limited the scope to those institutions within the state.

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 21.3 - 24.4}

{Tape: 2; Side: A; Approx. Time Counter: 27 - 28}

David Morris, self, testified he is a senior at the University of Montana, Missoula, currently working as an unpaid intern for **SEN. BUTCHER**. Before coming to Montana, **Mr. Morris** attended Fork Union Military Academy where he graduated sixth in his class, Hampden-Sydney College, and the University of North Carolina at Chapel Hill. Upon deciding to attend the University of Montana, he discovered the school would not accept undergraduate courses he had previously taken. Because he desired to remain in the region, he decided he would retake these courses but has yet to receive an explanation regarding why courses taken at two nationally accredited, renowned institutions were not acceptable to the university system.

Will Hammerquist, Associated Students, Montana State University, testified he is in support of this measure because he has friends who have experienced various difficulties with the issue of transferability; the same difficulty experienced by **Mr. Morris**. While his own experience has been positive--**Mr. Hammerquist** attended three other colleges--he believes a more uniform system would be beneficial to everyone. **Mr. Hammerquist** also expressed his organization's support of **SB 286**, another bill being introduced by **SEN. BUTCHER**. He also expressed his appreciation to **SEN. BUTCHER** for his package of bills this session geared toward increasing access, decreasing barriers, and generally improving the education system in the state of Montana.

Informational Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 24.7 - 26.9}

Joyce Scott, Deputy Commissioner for Academic and Student Affairs, Office of the Commissioner of Higher Education, testified there is presently a regents' policy--Policy 301.5--Transfer of Credits--which is very similar to **SEN. BUTCHER's** bill **EXHIBIT (eds31a03)**, except in one area. She stated representatives from the university system, in conjunction with representatives from community colleges, tribal colleges, and the House of Representatives, have been working toward revising the general education transfer core; the issue is very important to all parties involved. She noted Policy 301.5, item #2, from the Board of Regents policy, indicates all campuses are authorized to determine the applicability of credits earned at recently accredited or regionally accredited institutions. She would like the Committee to know they have been working on this issue.

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 28.3 - 31.1}

{Tape: 2; Side: B; Approx. Time Counter: 1.7 - 16.5}

SENATOR MIKE COONEY, referring to Policy 301.5 provided by **Ms. Scott**, asked **SEN. BUTCHER** for his comments on the policy and how it is working. **SEN. BUTCHER** responded, although he commends various people working on this project including **Ms. Scott**, the policy has been around for a very long time and there seems to have been no progress. He stated one of the reasons behind the bill was to provide the regents with additional power to accomplish the goal. He also noted he thought this issue had been addressed long ago until he toured campuses this past summer. The students having difficulties were not from out of state, as in **Mr. Morris'** case, but had attended Montana schools.

SEN. BUTCHER related a personal experience during the sixties and noted he truly thought the problem had been addressed. He believes, although the policy is in place, they are not following their policy.

SEN. COONEY, referring again to the hand-out, asked **Ms. Scott** whether passage of the bill will prompt the Commissioner's Office to move more quickly toward resolving this issue. **Ms. Scott** replied the authority to determine curriculum lies with the faculty, therefore, transferability is primarily up to the faculty as well. **Ms. Scott** also stated Montana's number of baccalaureate graduates with at least some transfer credits is much higher than the national average.

SEN. STORY, conveying the state constitution vests authority over the university system in the Board of Regents, asked **Ms. Scott** to clarify how the faculty came to be in charge of transferability. **Ms. Scott** indicated the university gave the faculty responsibility for the curriculum. **SEN. STORY** reiterated, they only have that power because the Board of Regents has allowed them to. **Ms. Scott** replied she did not believe the Regents would like to withdraw that power at this particular juncture. **SEN. STORY**, referring to **Ms. Scott's** hand-out on Policy 301.5, stated the problem arises because each campus has the authority to accept or deny transfer credits. **Ms. Scott** replied the policy is that transfer credits will be accepted from regionally accredited institutions; if credits do not fit into one category, they will fit into another. She believes **Mr. Morris'** experience was an anomaly. **SEN. STORY** stated he agrees the system has improved over the past few years since the reorganization, but he remains concerned these types of problems continue to occur.

SEN. JOHNSON, referring to testimony provided by **Mr. Hammerquist**, asked if he would mind having six of the students to whom he referred explain their situations and provide the information to him. **Mr. Hammerquist** replied in the affirmative.

SEN. JOHNSON asked **SEN. BUTCHER** whether this legislation might present a constitutional challenge in that authority over the university system lies with the Board of Regents and not the legislature. **SEN. BUTCHER** agreed the bill sits on a very fine line constitutionally; however, as the entity authorized to fund the university system, he thinks the legislature has the right to statutorily provide some guidelines. He believes this is nothing more than a broad policy for the Regents to follow, and is therefore permissible. **SEN. JOHNSON**, referring to Section 1 of the bill, asked **SEN. BUTCHER** whether he is certain this legislation is not getting involved in the running of the

university system. **SEN. BUTCHER**, again agreed it is a very fine line. However, because we are talking about taxpayer funded programs, to require all history departments to agree on a course catalog--thus, necessarily saving taxpayer dollars on unnecessary duplication--is a place where the legislature belongs. If they are not fulfilling their fiduciary duty to the state, then the legislature has the authority and an obligation to provide legislative oversight.

SEN. JOHNSON, noting the legislature provides an ever decreasing portion of university funding, but even if it were seventy-five percent (75%) of the total funds, stated he does not think this is a permissible right of the legislature. **SEN. BUTCHER**, noting most of the remainder of the money comes from students, stated the legislature represents those students as well as the university system. **SEN. JOHNSON**, in an attempt to clarify his question, noted what the law--i.e., the constitution--is at present. **SEN. BUTCHER** again noted he believes the legislature is authorized to create basic policy, and this legislation does simply that. **SEN. JOHNSON** emphasized his disagreement, noting the bill requires an institution to accept transfer credits; it does not suggest the system should work toward that goal. **SEN. BUTCHER** responded as taxpayer supported courses, one unit of credit should be accepted system wide.

SENATOR TOM ZOOK, noting his agreement with **SEN. JOHNSON** on the possibility of a constitutional challenge, asked how **SEN. BUTCHER** would respond if the university system's response was not favorable. For example, would he withhold funding. **SEN. BUTCHER** responded that could be an option. He also noted since students are providing a large portion of the system's funding, something in the statutes would provide them with additional leverage. **SEN. ZOOK** asked about the possibility of students not attending an institution that would not accept transfer credits. **SEN. BUTCHER** noted that may present a challenge to personal freedoms.

Closing by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 16.6 - 19}

SEN. BUTCHER noted there are two basics to this bill. First, we are putting into code a certain measure of recourse for students. We are also making it possible for the legislature to review funding issues. If universities are compelling students to repeat courses they've already successfully completed, then we should be asking why. He believes a uniform course catalog--which ensures a course taken at one institution will be honored by another institution in the same system--is a basic concept

that should not be that difficult to accomplish. **SEN. BUTCHER** expressed his appreciation to the Committee.

HEARING ON SB 280

Sponsor: **SENATOR EDWARD BUTCHER**

Proponents: **NONE**

Opponents: **NONE**

Informational Witnesses: **NONE**

{Tape: 2; Side: B; Approx. Time Counter: 19.2 - 21}

CHAIRMAN GLASER inquired how **SEN. BUTCHER** would like to proceed with **SB 280**. **SEN. BUTCHER** noted some technical concerns have arisen in regard to the bill, and without objection he would like to withdraw the bill from consideration.

CHAIRMAN GLASER, announcing **SEN. BUTCHER's** decision to the audience, asked if there was anyone present who would like to address the bill. Seeing no response, the **CHAIRMAN** acknowledged **SEN. BUTCHER's** request. He also reminded **SEN. BUTCHER** of the necessity to provide a written form of the request within twenty-four hours **EXHIBIT (eds31a04)**.

EXECUTIVE ACTION ON SB 276

Motion: **SEN. ZOOK** moved that **SB 276** **BE INDEFINITELY POSTPONED**.

Discussion:

SEN. RYAN could not be located for discussion on this bill; therefore, **SEN. ZOOK** withdrew his motion to **INDEFINITELY POSTPONE** **SB 276**.

EXECUTIVE ACTION ON SB 259

{Tape: 2; Side: B; Approx. Time Counter: 23.8 - 31}

{Tape: 3; Side: A; Approx. Time Counter: 0.2 - 22.5}

Motion: **SEN. ZOOK** moved that **SB 259** **DO PASS**.

Discussion:

SEN. COONEY inquired whether there were any amendments to **SB 259**.

SEN. GLASER replied in the negative, noting the bill has gone through eight or nine months of extensive drafting.

SEN. JOHNSON asked whether there is a fiscal note for the bill.

SEN. GLASER explained the plan is allowed to borrow money, however there is no direct fiscal impact to the state. **SEN.**

JOHNSON asked whether the bill provides a rate for borrowing the money. **SEN. GLASER** explained the bill defines the rate as "the

going rate." **SEN. JOHNSON** asked if the plan would be allowed to

borrow on the open market. **SEN. GLASER** also stated a fiscal note is available and requested it be distributed again.

SEN. COONEY noted the fiscal note is longer than the bill. **SEN.**

GLASER explained he believes there is a certain amount of mix-up

between the present bill and one making progress through the

House. This bill establishes a Governing Board which will be

responsible for creating the state-wide health plan. The House

bill has an actuarial study attached to its fiscal impact and

SEN. GLASER believes the fiscal note for **SB 259** was influenced by

the actuarial study. Accordingly, although signed by him, he

does not agree with its conclusion. Since the program is a

distinct entity, the state does not become involved legislatively

unless the plan should run out of money. The program must be

actuarially sound, but were they to experience twenty heart

surgeries in one day there might be a problem.

SEN. RYAN inquired whether retirees are not a part of the plan,

or are required to be covered by state law. **VICE-CHAIRMAN STORY**

referred **SEN. RYAN** to the original chart provided by **SEN. GLASER**

which indicated this is a basic plan. Each district may provide

supplemental aspects to include dental, vision, retirees, and

those kinds of things.

SEN. GLASER indicated retirees can opt-in under this bill. Under

the House bill, retirees have a more stringent and selective

opting requirement which is controlled by collective bargaining.

SEN. BLACK asked if it is correct that a retiree would be able to

continue if they paid the premium. **SEN. GLASER** responded in the

affirmative.

SEN. BUTCHER inquired whether a school district may opt-out of

the plan, or is it mandatory. **SEN. GLASER** explained the base

plan applies to every district. In order to protect the

collective bargaining process, the plan allows for negotiation

over how costs will be allocated and what type of supplemental

coverage will be offered. This also allows districts to retain the type of coverage they have at the present time.

SEN. BLACK asked why many of the larger schools are reluctant to join a state-wide plan, while at the same time many of the smaller schools believe it would be beneficial. **SEN. GLASER** explained some large school districts have had a great deal of success with their health care plans; some large districts have not. Some have substantial reserves, for example Great Falls. These districts could use those reserves to pay toward money owed the plan and to establish supplemental packages. Some of the large districts have not yet had to deal with an aging population, but may soon.

SEN. JOHNSON inquired how the Board would be created. **SEN. GLASER** responded the guidelines for creating and governance of the Board is contained within the bill.

SEN. RYAN explained in his community of Great Falls the district has been very successful. He noted the members have been doing this for about twelve years and are very astute regarding the negotiation process with Blue Cross/Blue Shield.

SEN. BUTCHER asked whether a district could choose to opt-out. More specifically, would the plan work if some district opted-out. **SEN. GLASER** explained, unfortunately, in order to achieve the goal of covering all teaching staff, it would be necessary for all districts to participate. Both plans presently being suggested envision to one degree or another, everybody will be involved. **SEN. BUTCHER**, noting how well some districts do, inquired whether **SEN. GLASER's** perception of the plan is a basic plan with local districts being left to decide on supplemental coverage. **SEN. GLASER** explained the bill creates a Board whose members will create a state-wide basic plan. Local districts will be able to expand beyond the base however they choose. He stated he sees the basic plan might have less coverage than Great Falls, but also sees the cost as being substantially less because there will be 11,000 to 14,000 primary persons to be covered. If the Board is doing their job, then economies of scale can be achieved. If districts such as Great Falls, Missoula, and Billings are allowed to opt-out, the plan will not work. **SEN. GLASER** also expressed his assurances regarding governance as set forth in the bill.

CHAIRMAN GLASER explained he has given a great deal of thought to this proposal over the past year. While it may not be a perfect solution, it is a necessary answer to a wide-spread problem. He noted, by analogy, how the state eventually found it necessary to institute a payroll tax for worker's compensation.

Vote: Motion carried 6-4 with COONEY, ELLIOTT, MANGAN, and RYAN voting no; ELLIOTT and MANGAN via proxy, and ZOOK voting aye via proxy.

EXECUTIVE ACTION ON SB 276

{Tape: 3; Side: A; Approx. Time Counter: 22.7 - 31}

{Tape: 3; Side: B; Approx. Time Counter: 1.9 - 10}

Motion: SEN. BUTCHER moved that SB 276 BE INDEFINITELY POSTPONED.

Discussion:

SEN. RYAN explained during the hearing on this bill the Committee heard a great deal of testimony from people concerned about their children being tested by the state and the state getting involved in their business. He noted he understands those concerns. He also informed the Committee about another case where parents removed their children from school to avoid constant intervention later to be discovered locking their five children in the house alone whenever they left. Further, although offers were made on the part of the home schooling community to meet with SEN. RYAN after the hearing, those individuals left immediately afterward. He reiterated his concerns about some parents using the home school laws to avoid detection of child abuse, and asked how many children are too many. Although he believes many home school parents are responsible and doing a good job, he remains concerned about those who are not. He stated his original idea was to have county superintendents do home visits, asking to see the children and the parents' lesson plans. That idea was even more unpalatable; being seen as an intrusion into the home. SEN. RYAN also outlined the various steps he has taken to communicate with the home school community, noting there has been no good faith effort on their part. He conveyed the support of various community members who indicated they had no idea the state did not have some mechanism for monitoring the progress of home schooled children. He believes the bill should move forward for full discussion. He asked Mr. Parker if in fact his assertion regarding no monitoring is correct. Mr. Parker replied in the affirmative, noting there is no monitoring whatsoever.

Substitute Motion: SEN. RYAN made a substitute motion that SB 276 DO PASS.

Discussion:

SEN. COONEY stated this is a very tough issue; noting he was involved with the legislature during the time the present home schooling laws were enacted. He believes there are a number of good people teaching their children at home, but also believes there are families abusing the system. He commended **SEN. RYAN** for his attempts to address the issue, but indicated he does not believe this is the appropriate vehicle at this time. He would like to see the home schooling community come forward with some suggestions on how to address these problems. Though he cannot support the measure at this time, he is truly supportive of **SEN. RYAN's** objectives.

SEN. STORY, who also believes there are many good home school families, is concerned by the fact that there is no motivation for them to come to the table. As long as they are able to bring 400 - 500 people together in opposition--essentially killing any bill--they have no reason to participate and cooperate.

SEN. BUTCHER stated he is probably more knowledgeable about the home schooling issue than most. He sees **SEN. RYAN's** reliance on potential abuse of children as unsubstantiated. He thinks if there was any credible evidence of people doing such things social services would be at the door in no time. He relayed a story about the first instance of a child being pulled from public schools because he was being tormented. The family proceeded to educate the children with very successful results. He also indicated he is not pleased with the graduation rates from public schools. He believes **SEN. RYAN**, as well as local superintendents, should look to the various laws against child abuse for a solution.

CHAIRMAN GLASER, noting his respect for **SENS. RYAN** and **BUTCHER**, indicated this is one of the most emotional bills that has come before the Committee. He explained in Yellowstone County there is an extraordinary program for reaching out to home schools because the County Superintendent is an extraordinary person.

SEN. BLACK expressed his admiration for **SEN. RYAN's** efforts, noting this issue needs discussion and response if necessary. He too believes there are many good families presently doing home schooling, many of those in his own community with whom he is very familiar. He believes, generally, Montana's home schools have great credibility. Unless and until that credibility diminishes, he does not think they will be amenable to any type of testing. He does not think testing is the appropriate response at this time.

Vote: Substitute DO PASS motion SB 276 failed 1-9 with **RYAN** voting aye; **SENS. ELLIOTT, MANGAN**, and **ZOOK** voting no via proxy.

Motion/Vote: SEN. COONEY moved that SB 276 BE INDEFINITELY POSTPONED. Motion carried 9-1 with RYAN voting no; SENS. ELLIOTT, MANGAN, and ZOOK voting aye via proxy.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. BILL GLASER, Chairman

TARI ELAM, Secretary

BG/TE

EXHIBIT (eds31aad)